

STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20, SUBREGION 37

THE KALAMA BEACH CORPORATION d/b/a  
MALAMA MARKET,

Employer

and

Case 37-RC-4183

INTERNATIONAL LONGSHORE AND  
WAREHOUSE UNION, LOCAL 142, AFL-CIO,

Petitioner

DECISION AND DIRECTION OF ELECTION

The Kalama Beach Corporation d/b/a Malama Market (the Employer), operates a grocery store in the City of Pahoia, Hawaii, on the Big Island of Hawaii. By its amended petition, International Longshore and Warehouse Union, Local 142, AFL-CIO (the Petitioner) seeks to represent a unit comprised of about 34 employees in the following classifications:

All full-time, regular part-time and casual employees, including cashiers, courtesy clerks, grocery clerks and produce clerks employed by the Employer at its Pahoia facility; and excluding all other employees, deli clerks, bakery clerks, meat wrappers, meat cutters, meat cleaners, fish cutters and office clerical employees, receiving clerks, scan coordinators, confidential employees, managerial employees, guards and watchpersons and supervisors as defined in the Act.

The Employer asserts that the petitioned-for grouping of employees is not an appropriate unit and that to be appropriate, the unit must include deli clerks, bakery clerks, meat wrappers, meat cutters, meat cleaners, the fish cutter and the receiving clerk. The unit urged by the Employer consists of about 55 hourly employees.

For the reasons discussed below, I find that the unit sought by Petitioner is not an appropriate unit and that to be appropriate, the unit must include bakery clerks, deli clerks and the receiving clerk. I also find that meat cutters, the fish cutter, meat wrappers, meat cleaners are not required to be included in the unit in order for it to be appropriate.

### **FACTS**

#### **A. Stipulations.**

The parties stipulated, and I find, that based on their authority to discipline and/or discharge employees and/or to effectively recommend the discipline and/or discharge of employees, the store manager, assistant store managers, grocery manager, deli manager, meat manager, front office manager, bakery manager and produce manager are supervisors within the meaning of the Act and should be excluded from the unit. The parties also stipulated, and I find, that the scan coordinator and office clerical employees do not share a community of interest with the petitioned-for unit employees and should be excluded from the unit.

**B. Prior Decision and Direction and Certification.** On February 6, 2007, I issued a Decision and Direction of Election in *The Kalama Beach Corporation d/b/a Malama Market*, Case 37-RC-4151, involving the same parties. In that case, the Petitioner sought to represent a unit that essentially is the same as that urged by the Employer in this matter. The only dispute in Case 37-RC-4151 concerned the supervisory status of department managers and assistant department managers, whom the Petitioner sought to include, and the Employer sought to exclude, from the unit; and the managerial status of the assistant grocery department manager. In that case, I found all of the department managers at issue to be statutory supervisors and excluded them from the unit. I also found the assistant managers of the grocery and bakery departments were not statutory supervisors, and that the assistant grocery department manager

was not a managerial employee. Accordingly, I included them in the unit. In the instant case, the Employer asserts and the Union does not dispute that the Employer no longer employs persons in the classification of assistant department manager at its facility.

On March 19, 2007, a Certification of Results of Election issued in Case 37-RC-4151, certifying that a majority of valid ballots had not been cast for the Petitioner in the following unit:

All full-time and regular part-time assistant department managers, cashiers, courtesy clerks, meat cutters, fish cutters, meat wrappers, meat cleaners, grocery clerks, produce clerks, deli clerks and bakery clerks employed by the Employer at its Pahoia facility; but excluding all other employees, all managerial employees, confidential employees, office clerical employees, store managers, assistant store managers, department managers, receiving clerks, scan coordinators, guards and/or watchpersons and supervisors as defined by the Act.

C. Witnesses. The witnesses at the hearing in the instant case included Employer Store Manager Ray Miyazono and Petitioner Business Representative Isaac Fiesta, Jr.

D. The Employer's Facility, Operation and Management. The Employer's grocery store operates seven days a week from 6 a.m. to 10 pm. It has three check-out counters, eight aisles, chill boxes, freezers, and a warehouse in the rear where the managers have their offices and where the scanning coordinator and receiving clerk work. The store has an open floor-plan and several departments, including the front-end office, grocery, produce, deli, bakery and meat departments.

The record reflects that the Employer is part of the Sullivan Family of Companies, which consists of a number of grocery and retail stores located in Hawaii, including Food Pantry, Sack N Save and Foodland Super Market, Ltd., (Foodland). The chairman and CEO of the Employer is also the president of Sack N Save and Foodland. The Employer's human resources, budgeting

and payroll functions are handled out of the Employer's corporate office in Honolulu, which is located at the same address as the Sullivan Family of Companies.

Employer Store Manager Ray Miyazono, has worked for the Employer since December 2007. Prior to that time, he was the store manager at Sack N Save on the Big Island of Hawaii. The record reflects that the Employer has sent its managers and office clericals to train at Foodland in Waimea, Hawaii. Other than the foregoing evidence, the record does not disclose the nature of the relationship and/or overlap between the management and operation of the Employer and that of the other entities within the Sullivan Family of Companies.

Three assistant store managers report to Store Manager Miyazono at the Employer's facility. Reporting to Miyazono and the assistant store managers are the front end office manager, grocery manager, produce manager, deli manager, bakery manager and meat manager.<sup>1</sup> Each department manager supervises the employees within his or her department. The record reflects that the front end office manager substitutes for the grocery manager, and the deli and bakery managers substitute for each other.

E. The Employer's Workforce & Working Conditions. All of the Employer's hourly employees receive the same employee handbook, are subject to the same personnel policies, and receive the same fringe benefits. All employees use the same time clock, break room, locker room and restrooms. All employees wear a similar uniform and have name tags which do not identify the department in which they work.

Except for courtesy clerks and meat cleaners, who start at the minimum wage of about \$7.25 an hour, all of the Employer's hourly employees other than meat cutters and meat

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<sup>1</sup> The scan coordinator and the office clerks, whom the parties stipulated to exclude from the unit, also report directly to Miyazono and the assistant store managers.

wrappers receive a starting wage rate of about \$8.50 an hour. The record does not disclose the starting wage of meat cutters and meat wrappers. All hourly employees also receive a pay increase upon completing 1040 hours of work. The record does not, however, disclose the amount of that increase. The Employer does not pay a shift differential premium to employees. In my decision in Case 37-RC-4151, I found that the Employer paid most of its employees between \$7 and \$10 an hour and that a meat cutter was the highest paid employee at \$13.50 an hour, which was a higher rate of pay than that of any of the department managers employed at that time other than the meat department manager.

F. Front End Office Department. The Employer's front end office department operates during the regular store hours of 6 a.m. to 10 p.m. It is supervised by the front end office manager and the assistant store managers and consists of 14 cashiers and 11 courtesy clerks.

Cashiers. The cashiers work at three check-out lines located at the front of the store. There are no other cash registers in the store. The cashiers are given cash drawers (tills) in the customer service department and they must cash-out and count their tills at the end of their shifts in order to ensure that their till balances are correct. Cashiers are given four hours of on-the-job training by the front end office manager on how to use the cash register. They are not bonded. Only designated persons within the store may use the cash registers and handle money. Although Store Manager Miyazono testified that deli clerks have sometimes checked out customers, the record contains no evidence concerning how many of the deli clerks are authorized to use the cash registers or how often they do so. The record reflects that when the check-out lines are not busy, the cashiers bag groceries, assist in the bakery, deli and other departments, clean store areas, and provide customer service. They also assist the office clerks,

who are excluded from the unit pursuant to the parties' stipulation. When a cashier is absent, an office clerk, scan coordinator, store manager or an assistant store manager fills in.

Courtesy Clerks. Courtesy clerks bag groceries, assist customers, collect carts and clean throughout the store. When a courtesy clerk is absent, a cashier, grocery clerk, produce clerk, deli clerk, meat wrapper or meat cleaner fills in on an as needed basis. Store Manager Miyazono testified that, while courtesy clerk is a starting position that is paid the minimum wage, there is no clear line of promotion from that job classification into other jobs within the store. He further testified that, during the six months he has been store manager, one courtesy clerk has transferred into the grocery clerk classification, one has transferred into a bakery clerk position, and one has become a deli clerk.

G. The Grocery Department. The grocery department operates during regular store hours from 6 a.m. to 10 p.m. The five grocery clerks and one receiving clerk in the department are supervised by the grocery department manager.

Grocery Clerks. The grocery clerks stock and maintain the shelves throughout the store, including in the bakery, deli, meat and liquor departments. They also clean throughout the store as needed, set up signs and promotional displays, and provide customer service. Grocery clerks also deliver grocery items such as paper and plastic products to the deli department for use by that department. Deli clerks also go into the grocery department to obtain such items. No special training, other than the forklift training given to all employees, is required for the job of grocery clerk.

Receiving Clerk. The receiving clerk works in the warehouse and has a desk and a computer. His primary duties are to receive and unload products for all store departments, ensure that the products received match their respective invoices, sign the invoices, and input

information from the invoices into the computer. He uses a forklift and pallet jack to unload the shipments of products. He also uses a catalogue to determine where the products of the various vendors belong within the store. The grocery manager provides three days of computer training to the receiving clerk on how to enter invoice data. The receiving clerk works during the hours when deliveries are made to the store—Monday through Friday, from 6 a.m. to 3 p.m. There are no deliveries on Sundays, and deliveries made on Saturdays are handled by the grocery manager.

The major deliveries to the Employer's store occur on Tuesdays and Fridays. On those days, the receiving clerk notifies the employees in all departments when the delivery will arrive and they assist him in unloading the shipment and taking the products to their respective departments. Products for the various store departments are mixed together in the shipments and must be sorted out. The receiving clerk organizes the received products onto pallets so that employees can access the products for their departments. The unloading process on Tuesdays and Fridays takes about 45 minutes. Employees other than the receiving clerk also sometimes receive and sign for product deliveries for their department and/or for other departments. For example, produce clerks have signed for bakery goods and meat department employees have signed for grocery goods. However, no employee other than the receiving clerk appears to input invoice information into the computer. The grocery manager, front end manager, assistant store managers and scan coordinator handle this function when the receiving clerk is on vacation.

H. Produce Department. The produce department area is located next to the bakery department and has display cases, a produce preparation area, and a chill box shared with the deli, grocery and bakery departments. The produce manager supervises four produce clerks whose job it is to receive shipments of produce, trim the produce, shelve it, maintain the shelves, clean the produce department, and service customers. Produce clerks also work in the deli

department, making sandwiches when the deli department is short-staffed or busy. In addition to the foregoing, produce clerks also supply the deli department with lettuce, tomatoes, cucumbers and alfalfa to be used in the preparation of sandwiches and salads, and supply the meat department with produce items for use in that department in making “poke,” which is a mixture containing cubes of fish, salt, green onions and seaweed. When produce clerks are absent, cashiers or courtesy clerks perform produce work on an as needed basis.

I. Bakery Department. The bakery department is located between the deli and the produce departments. The bakery clerks work staggered shifts between the hours of 4 a.m. and 6:30 p.m. The bakery is open to customers from 6 a.m. to 6:30 p.m. The bakery manager supervises four bakery clerks whose job is to heat and serve donuts, bread and pies. The bakery clerks do not make any baked products using primary ingredients and no special skills are required for hire into the job. Bakery clerks also provide assistance in other departments, including: the deli department, where they prepare bread for sandwiches; the produce department, where they sometimes assist customers; and, the grocery and deli departments, where they unload and deliver products from the warehouse. When a bakery clerk is absent, a courtesy clerk or cashier fills in on an as-needed basis. The bakery clerks are paid a starting wage rate of \$8.50 an hour.

J. Deli Department. The deli department is located next to the bakery department. Its hours of operation are from 4 a.m. to 8:30 p.m. The deli department manager trains and supervises nine deli clerks, whose job it is to prepare sandwiches and salads and put hot products out for sale to customers. The deli clerks obtain produce items (e.g. lettuce, cucumbers, tomatoes and sprouts) from the produce department and obtain condiments, paper, and plastic products from the grocery department for use in the preparation of sandwiches and salads.

Sometimes, produce clerks and grocery clerks take such items to the deli department. Deli clerks work staggered shifts that begin at 4 a.m., 5 a.m., 8:30 a.m. and 11:30 a.m. Some of their afternoon shifts are six rather than eight hours long. Between 4 and 6 a.m., the deli clerks prepare food, including heating up hot entrees and making sandwiches, and clean the deli cases. Courtesy clerks, cashiers, office clerks, produce clerks and meat wrappers sometimes assist in making sandwiches when the deli department is short-staffed or busy. According to Store Manager Miyazono, deli clerks have sometimes worked on the cash registers to check out customers.

K. Meat Department. The meat department is located at the rear of the store and is open only from 6 a.m. to 6 p.m. Three meat cutters, one meat wrapper, two meat cleaners and one fish cutter work in that department. They are supervised by the meat department manager. New meat department employees are generally hired into the meat cleaner or meat wrapper position. The record reflects that meat department employees progress from meat cleaner to meat wrapper to meat cutter and that they are all trained within that department by the meat manager to perform the various tasks required of each position.

Store Manager Miyazono testified that he did not know the current wage rates for the meat department employees, except that the meat cleaner apparently is paid \$7.25 an hour. He further testified that the same employees have been working in the meat department since he became store manager in December 2007. In the Decision and Direction of Election that issued in Case 37-RC-4151, on February 6, 2007, I found that the highest paid meat cutter earned \$13.50 an hour, while most of the clerks at the store were paid between \$7 and \$10 an hour. There is nothing in the record to show a change in such wage rates.

Meat Cutters. Miyazono testified generally that the Employer does not require new hires in the meat department to have special skills and that meat cutters are trained by the meat manager for about three to six months. The beef and pork sold by the Employer is received as pre-packaged or sub-prime cuts and the meat cutters cut it into smaller portions. They do not cut up carcasses or chicken. Trained meat cutters in turn train other employees in the department how to cut meat and only the meat department employees do so. Meat cutters use special tables, knives, saws and slicers to cut the meat. When a meat cutter is absent, the meat wrapper performs meat cutting work.

Meat Wrapper. The meat wrapper's job is to put cut meat onto trays and wrap, weigh and price the meat, using a scale and wrapping and labeling machines located in the meat department. The meat wrapper also receives products for the meat department, stocks the freezer and chilled display cases in the meat department, and stocks the meat items sold in the grocery department, such as cold cuts and beef jerky. Only meat department employees stock the meat display cases in the meat department.

Meat Cleaners. The two meat cleaners work 24 to 30 hours a week. They clean the meat department and stock meat products in the meat and grocery areas of the store. They receive training regarding the special types of cleaning solutions used to clean the table where meat is cut. When work in the meat department is slow, they may assist the grocery department in stacking incoming shipments of products and they assist customers in the store. When the meat department is busy, the meat cleaners may work until 8 p.m. to clean up after the department closes at 6 p.m. When a meat cleaner is absent, the meat cutter or meat wrapper generally cleans up the meat department. The store manager, assistant store managers and courtesy clerks occasionally clean the meat department on an as-needed basis.

Fish Cutter. The fish cutter cuts fish into steaks and fillets for about four hours of his eight hour shift. On a daily basis, he also prepares poke, which is placed into containers for sale to customers. The fish cutter gets green onions for poke from the produce department or has produce clerks bring it to him. The fish cutter cuts the fish on a special table, using special knives. When he is absent, a meat cutter or meat wrapper cuts fish and makes poke. The fish cutter works from 7 a.m. to 3:30 p.m. or from 8 a.m. to 4:30 pm. The other meat department employees work shifts from 7 a.m. to 3:30 p.m., 8 a.m. to 4:30 p.m., or from 10:30 a.m. to 7 p.m.

L. Interchange. The only evidence in the record regarding the permanent transfer of employees from one department to another is Store Manager Miyazono's testimony that, during the six months he has been manager, one courtesy clerk transferred into the position of grocery clerk, one courtesy clerk transferred into the position of bakery clerk, and one courtesy clerk transferred into a deli clerk position. Miyazono also testified generally that employees within the meat department progress within that department to the position of meat cutter.

With regard to temporary transfers, Miyazono testified that the Employer does not formally substitute employees when there are absences but, rather, uses other employees to handle the absent employee's duties on an as-needed basis. The record is replete with testimony by Miyazono concerning store employees assisting in other departments on a daily basis when a department is busy, short-staffed or when an employee's own department is not busy. Thus, when the bakery clerks are absent, courtesy clerks and cashiers fill in for them on an as-needed basis by putting out doughnuts, consolidating doughnut trays, and cleaning. Miyazono testified that he has observed: cashiers, grocery clerks, produce clerks and meat department employees making sandwiches in the deli department on an as-needed basis; grocery and produce clerks delivering products from the warehouse into the bakery and meat departments; courtesy clerks

cleaning in the bakery and deli departments; and, grocery clerks, produce clerks, meat department employees and deli clerks bagging groceries. Cashiers and produce clerks also assist the receiving clerk by marking down damaged items and tagging them for sale in the store. As indicated above, employees from all store departments have contact with each other when they unload major shipments of products received on Tuesdays and Fridays. The grocery, produce, deli and bakery clerks have regular contact with each other because they share the same chill box for their products. The grocery, bakery, and deli clerks regularly have contact with each other because they all store products from their departments in the same freezer. Cashiers, grocery clerks and courtesy clerks all stock the liquor department and stock milk, water, juice and soda in the same cooler. As indicated above, the produce clerks and grocery clerks also provide products from their respective departments to the deli department and the produce department also provides certain produce items to the meat department for use by the fish cutter in making poke. Further, as noted above, all employees use the same time clock, break room, locker area and restrooms.

While meat department employees work in other departments on an as-needed basis, the record contains no evidence that any non-meat department employees cut or wrap meat or fish. The meat cutter and meat wrapper clean the meat department when the meat cleaners are absent and only meat department employees stock the meat display case. There is no evidence that any employees from any other store department have permanently transferred into the meat department or that any meat department employee has transferred out of the meat department into another store department.

M. Training and Equipment. The Employer does not require job applicants to have any specialized training or experience prior to their hire. Rather, new employees are given on-

the-job training by their department manager. The record shows that: the job of meat cutter requires three to six months of on-the-job training by the meat department manager; the job of cashier requires about four hours of training on the cash register by the front end office manager; and, the job of receiving clerk requires about three days of training on the computer by the grocery manager. All employees receive training in the use of forklifts and use them to unload products. All employees also use pallet jacks, six wheelers, and hand-trucks to move products within the store. The receiving clerk has a desk and uses a computer; the meat cutters use knives, saws and slicers; the fish cutter uses knives; and the meat wrapper uses special wrapping and labeling machines.

N. Collective-Bargaining History & Area Bargaining Practice. There is no evidence of any collective-bargaining history between the Employer and the Petitioner at the Pahoia store. However, the record reflects that the Petitioner has had two collective-bargaining agreements with other grocery store chains in Hawaii that are within the Sullivan Family of Companies of which the Employer is part. One of these agreements, effective April 1, 2007, through March 31, 2010, is between the Petitioner and Sack N Save Foods. It covers all grocery, produce and non-food department employees employed by Sack N Save in its grocery/warehouse stores located on the Islands of Oahu, Maui, Kauai and Hawaii, exclusive of store directors, assistant store directors, grocery managers, produce managers, non-food managers, front end managers, office clerical employees, watchmen and/or guards, professional engineers, other job classifications covered by United Food and Commercial Workers (UFCW), and supervisors as defined in the National Labor Relations Act. The specific job classifications listed in the wage schedule of that agreement include cashiers, non-food clerks, all-purpose clerks, produce clerks,

courtesy clerks, and floral clerks. Store Manager Miyazono testified that the UFCW represents the deli clerks, bakery clerks and meat department employees at Sack N Save.

The other collective-bargaining agreement in the record is between the Petitioner and Foodland Super Market, Ltd. This agreement is effective from November 1, 2004, through October 31, 2007, and covers all regular part-time and casual employees of Foodland on the islands of Oahu, Maui, Kauai and Hawaii, exclusive of office clerical employees, watchmen and/or guards, professionals, engineers, all other job classifications covered by UFCW, and supervisors as defined in the National Labor Relations Act. The specific job classifications listed in the wage schedule of this agreement include grocery/produce, cashier/GM, head cashiers, GM manager, head grocery/produce, floral clerk, courtesy clerks, cashiers, head cashiers, head grocery/produce.

The record does not contain any evidence of the bargaining history surrounding these collective-bargaining agreements or of such history with regard to UFCW's representation of employees at these stores. Nor is there any evidence that UFCW has at any time represented employees at the Employer's store or that it currently seeks to represent any employees at this store.

### **ANALYSIS**

As indicated above, the Petitioner seeks a unit that includes cashiers, courtesy clerks, grocery clerks, produce clerks and excludes all other employees, confidential employees, guards and/or watchpersons and supervisors as defined in the Act. The Employer contends that, to be an appropriate unit, the unit must include deli clerks, bakery clerks, meat wrappers, meat cutters, meat cleaners, the fish cutter and the receiving clerk.

Section 9(b) of the Act provides that the Board “shall decide in each case whether . . . the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or *subdivision* thereof (emphasis added).” “The plain language of the Act clearly indicates that the same employees of an employer may be grouped together for purposes of collective bargaining in more than one appropriate unit.” *Overnite Transportation*, 322 NLRB 723 (1996). In deciding whether a petitioned-for unit is “appropriate” under Section 9(b), the Board’s discretion is broad. *NLRB v. Action Automotive*, 469 NLRB 490, 494 (1985), quoting *NLRB v. Hearst Publications, Inc.*, 322 US 111, 134 (1944). While a petitioner’s desire in regard to unit composition and scope is relevant, it is in no way dispositive, *see Airco, Inc.*, 273 NLRB 348 (1984), because a proposed bargaining unit based on an arbitrary grouping of employees will always be inappropriate. *See, e.g., Moore Business Forms, Inc.*, 204 NLRB 552 (1973); *Glosser Bros., Inc.*, 93 NLRB 1343 (1951). Additionally, the Act prohibits the Board from establishing a bargaining unit based solely on the extent of organization. *See, e.g., Motts Shop Rite of Springfield*, 182 NLRB 172 (1970). Where, however, a petitioned-for unit of employees has a community of interest that is distinct from the interests of the employees sought to be excluded from the bargaining unit, the Board holds such a unit to be an appropriate unit. *See Aerospace Corp.*, 331 NLRB 561, 562 (2000); *Ore-Ida Foods*, 313 NLRB 1016 (1994), *enfd*, 66 F.3d 328 (7<sup>th</sup> Cir. 1995).

It is well established that a certifiable unit need only be an appropriate unit, not the most appropriate unit. *Morand Bros. Beverage*, 91 NLRB 409 (1950), *enfd*. 190 F.2d 576 (7th Cir. 1951); *Omni International Hotel of Detroit*, 283 NLRB 475 (1987); *P.J. Dick Contracting*, 290 NLRB 150 (1988); and *Dezcon, Inc.*, 295 NLRB 109 (1989). The Board does not compel a petitioner to seek the most appropriate or most comprehensive unit. “The Board’s declared

policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining.” *Overnite Transportation*, 322 NLRB 723 (1996), citing *Black & Decker Mfg. Co.*, 147 NLRB 825, 828 (1964). The Board's task, therefore, is to determine whether the petitioned-for unit is an appropriate unit, even though it may not be the only appropriate unit or the ultimate unit.

In making unit determinations, the Board looks first to the unit sought by the petitioner. If it is appropriate, the inquiry ends and the Board does not evaluate any competing unit contentions. If, however, the unit is inappropriate, the Board will scrutinize the employer's proposal. *Dezcon, Inc.*, supra at 111. Also see, *Overnite Transportation*, 325 NLRB 612 (1998). In assessing the appropriateness of any proposed unit, the Board considers community of interest factors such as employee skills and functions, degree of functional integration, interchangeability and contact among employees, whether the employees have common supervision, work sites, and other terms and conditions of employment, and collective-bargaining history. See, *P.J. Dick Contracting Inc.*, supra. The Board also considers the industry pattern of bargaining in the area. See *Washington Palm, Inc.*, 314 NLRB 1122, 1126 (1994).

Application of the community of interest criteria to the facts of this case shows that the Employer does not require any special skills or experience when it hires hourly employees. Rather, it provides on-the-job training to all employees—including training in the use of a forklift, pallet jack, six-wheeler and hand-truck. All employees use such equipment to move merchandise within the store. The Employer also trains employees to perform particular tasks required within their respective departments. The record shows that the meat cutters receive more training than any other employee in the store, which requires about three to six months. Other specialized training is given to the receiving clerk for about three days and cashiers for

about four hours. The fish cutter is taught how to cut fish; the meat wrappers are taught how to weigh, wrap and price meat using specialized equipment; and, the meat cleaner is taught to use a special cleaner on the tables used for cleaning and cutting meat and fish. There is no evidence that the work of the bakery and/or deli employees requires any particular skills or significant training.

With regard to interchange and functional integration among employees, the record is replete with evidence of employees performing similar work and assisting in each other's departments. Thus, all employees move products in the store using the forklift and other moving equipment. Cashiers, grocery clerks, produce clerks, and meat cleaners regularly assist on an as-needed basis in the deli department and cashiers, courtesy clerks, grocery clerks and produce clerks regularly assist on an as-needed basis in the bakery department. Deli department employees have also performed cashiering work and bakery clerks have unloaded and delivered products for that grocery department. Deli clerks also obtain products from the produce and grocery departments for use in the deli. The record also shows that the cashiers and produce clerks assist the receiving clerk by marking down damaged items and tagging them for sale in the store. Employees in the petitioned-for unit have also received and signed for products as does the receiving clerk. All of the store's employees also assist the receiving clerk in unloading the deliveries of products on a regular basis. The record shows that front-end office department courtesy clerks have permanently transferred to become bakery and deli clerks.

While there is evidence that meat department employees have at times assisted in other departments, and that the produce department provides produce items for use by the fish cutter in making poke, there is no evidence that any employees outside the meat department cut or wrap meat or fish. Rather, the only work that employees from outside the department perform inside

the meat department appears to be cleaning the department on an as needed basis. The testimony of Store Manager Miyazono is to the effect that employees generally progress within the meat department from the meat cleaner position to that of meat cutter and that they are all trained by the meat department manager in how to perform the duties of the various meat department positions. There is no evidence in the record that any other store employees have received such training.

With regard to contact among employees, the record shows that all employees at the store have regular contact with each other when they: unload the major shipments of goods received twice a week; provide assistance in each other's departments; and, stock areas that are shared in common with other departments, such as coolers and freezers. Employees also share the same break and locker rooms and restrooms and they use the same time clock.

With regard to supervision, while the overall supervision of the store is handled by the store manager, each department has separate immediate supervision by a department manager, each of whom is stipulated to be a statutory supervisor. The receiving clerk, whom the Petitioner seeks to exclude from the unit, has common supervision with the grocery department employees included in the petitioned-for unit. The disputed meat, deli and bakery department employees have their own separate department managers.

With regard to work location, all employees, except the receiving clerk, spend most of their work time inside the store. While the receiving clerk spends most of his work time in the warehouse, the record shows that he has regular contact with employees in all the other departments who regularly assist him in unloading shipments.

With regard to their terms and conditions of employment, all employees receive the same employee handbook, are subject to the same personnel policies, receive the same fringe benefits,

and use the same time clock, break room, locker room and restrooms. All employees wear similar uniforms and have similar name tags. Except for courtesy clerks and meat cleaners, who start at the minimum wage of about \$7.25 an hour, and the meat department cutters and wrappers, whose starting wage rate was not disclosed in the record, all of the hourly employees are paid a starting wage of \$8.50 an hour. As discussed above, meat cutters were earning as much as \$13.50 an hour at the time of the hearing underlying my prior Decision and Direction of Election of February 6, 2007. All employees receive an automatic pay increase after working 1040 hours of work. All employees appear to work a similar schedule, except that the bakery, deli and meat departments have different hours of operation from other departments and the receiving employee works a schedule that coincides with the period when deliveries are made to the store.

The record does not show any history of collective-bargaining by the Employer. However, the record shows that the composition of the petitioned-for unit is similar to that of the units covered by the two collective-bargaining agreements the Petitioner has with two of the Employer's sister corporations within the Sullivan Family of Companies in the State of Hawaii. At those stores, the "food" employees, such as the meat, deli and bakery employees, are apparently represented by the UFCW. However, the record does not otherwise contain any evidence regarding the operations of those stores or how those units came into existence.

Upon consideration of the foregoing evidence and the entire record in this case, I find that the petitioned-for unit is not an appropriate unit. Specifically, I find that the bakery clerks, deli clerks and the receiving clerk have a substantial community of interest with the petitioned-for employees, which requires their inclusion in the unit. I find that the meat department employees

have a sufficient separate community of interest to permit their exclusion from the appropriate unit.

Generally, the Board places deli and bakery employees in storewide units with grocery employees. See *Wal-Mart Stores*, 328 NLRB 904 (1999); *Scolari's Warehouse Markets*, 319 NLRB 153 (1995); *Ideal Super Markets*, 171 NLRB 1 (1968). Only rarely has the Board excluded bakery or deli employees from overall grocery units. See *C&K Market, Inc. d/b/a Ray's Sentry*, 319 NLRB 724, 725 (1995). Unlike cases involving meat department employees, the Board has never applied a presumption that a separate unit is appropriate for bakery or deli employees even when they exercise a full range of traditional craft skills. *Id.* When deli or bakery employees have been excluded from overall grocery units, the bakery and/or deli employees generally: have extensive training and bake from primary ingredients; have sometimes created their own recipes; have been experienced bakers with journeyman status; have had separate supervision; and, have had only rare contact with customers. *Id.*

In the instant case, while the bakery and deli departments are separately supervised from the other departments, the record shows that the bakery and deli clerks are not required to have specialized skills, prior experience or extensive training in order to perform their work. They do not bake from primary ingredients or create their own recipes. While the bakery and deli departments have different hours from other departments, the record also shows that the bakery and deli clerks regularly assist employees in the petitioned-for unit and that they are regularly assisted by such employees. Deli employees also obtain ingredients for their sandwiches and salads from the produce department. During the six-month period preceding the hearing, a courtesy clerk transferred into a bakery clerk position, another courtesy clerk transferred into a grocery clerk position and another courtesy clerk transferred into a deli clerk position. There is

ample evidence of contact between the bakery and deli clerks and other employees in the petitioned-for unit. Like all of the other employees in the petitioned-for unit, bakery clerks and deli clerks are covered by the same employee handbook and are trained to use a forklift and other equipment to move products within the Employer's store. Bakery clerks and deli clerks also receive a similar starting wage rate and the same benefits as employees in the petitioned-for unit. They also punch the same time clock, wear similar uniforms, and use the same break room, locker rooms and restrooms as employees in the petitioned-for unit. In sum, the bakery clerks and deli clerks have an overwhelming community of interest with the employees in the petitioned-for unit and, for this reason, I find that they must be included in the unit in order for it to be an appropriate unit. *Id.*

I also find that the receiving clerk must also be included in the unit in order for it to be appropriate. Although the receiving clerk works in the warehouse, he is part of the grocery department and is supervised by the grocery department manager, as are the grocery employees who are in the petitioned-for unit. The receiving clerk also has common skills with employees in the petitioned-for unit, in that he uses a forklift and unloads incoming shipments of products. The record shows that employees included in the petitioned-for unit regularly sign for and receive product deliveries when the receiving clerk is not available. The receiving clerk is paid the same starting wage rate as most of the other employees in the petitioned-for unit and he receives the same fringe benefits. He also shares the same terms and conditions of employment as the unit employees discussed above. Although he is trained to input information from invoices into a computer and spends a portion of his work time at a desk performing this function, I find that this evidence demonstrates that this position involves plant-clerical duties,

and supports the inclusion of this position in the unit. Accordingly, I find that to be appropriate, the unit must include the receiving clerk.

Finally, I find that the meat department employees (i.e., meat wrappers, meat cutters, meat cleaners and fish cutter) need not be included in the unit in order for it to be an appropriate unit. The Board has historically applied a presumption that a separate unit of skilled meat department employees is an appropriate unit and, even in cases where the skill level does not warrant application of the presumption, the Board has found separate units of meat department employees appropriate if community of interest factors supports such a finding. See *Wal-Mart Stores*, 328 NLRB 904 (1999); *Scolari's Warehouse Markets*, 319 NLRB 153 (1995). In the instant case, while the Employer does not require that meat department employees be skilled when they are hired, it does require several months of specialized training for its meat cutters. Further, the record shows that meat department employees progress from meat cleaner to meat wrapper to meat cutter positions. There is no evidence: that employees from any other departments cut or wrap meat; that employees have transferred into the meat department from other departments; or, that meat department employees have transferred out of that department to other departments. The only work performed by other employees in the meat department is occasional cleaning or delivery of products from the warehouse. The meat department is separately supervised and it has different hours of operation from the rest of the store. Meat cutters appear to be the highest paid hourly employees at the store. Meat department employees also use specialized equipment not used by other employees, including special meat and fish cutting tables, saws, knives, slicers, wrapping and pricing machines, and a degreaser only used for the meat and fish cutting tables. Based on such factors, I find that the meat department employees have a separate and distinct community of interest and I am excluding them from the

unit. *Id.* In reaching this conclusion, I have carefully considered the evidence that they sometimes assist in other departments and share some common terms and conditions of employment with unit employees, but I do not find that such factors require their inclusion in the unit in order for it to be appropriate. Although in my prior Decision & Direction of Election in Case 37-RC-4151, I found a store-wide unit to be appropriate, that decision does not control my decision in this case because no issue was raised regarding the appropriateness of the unit in Case 37-RC-4151, and it is well-established that there may be more than one appropriate unit among the same group of employees of an employer. See *Overnite Transportation, supra*.

The Petitioner argues that its collective-bargaining history with the Employer's sister stores at Foodland and Save N Sack supports a finding that the petitioned-for unit is an appropriate unit because those units are similar to that sought in this case. However, the Board has held that, where other relevant factors predominate, the factor of industry practice in the area does not render appropriate an otherwise inappropriate unit simply because it conforms to area practice. See *Washington Palm, Inc.*, 314 NLRB 1122, 1126 (1994). In the instant case, given the evidence showing that the bakery clerks, deli clerks, and receiving clerk have such a strong community of interest with other unit employees, I find that the evidence of an area pattern of bargaining is not sufficient to justify their exclusion from the unit. On the other hand, the pattern of bargaining shown by these contracts supports my exclusion of the meat department employees which is based on other community of interest factors.

In deciding that the meat department employees may be excluded from the unit, I have carefully considered the cases relied upon by the Employer. I find that *Wal-Mart, supra*, *K Mart Corp d/b/a Super K Mart Center*, 323 NLRB 582 (1997), and *Scolari's Warehouse Markets, Inc.*, 319 NLRB 153 (1995), are all supportive of my decision in this case, because in those cases

the Board found a separate unit of meat department employees to be an appropriate unit under the application of traditional community of interest criteria. In all three cases, as in the instant case: the meat department employees were separately supervised; they had distinct skills even if they were not so highly skilled as to warrant the application of the presumption of appropriateness of a separate unit; there was insignificant evidence of interchange and transfers; and, the meat cutters earned higher wages than other employees. I do not find those cases to be inapplicable here merely because the meat cutters in those cases were hired with more experience, rather than receiving on-the-job training by the meat manager, as in the instant case. In sum, in those cases, as in the instant case, the meat department employees had a distinct community of interest from other store employees.

*Kosher Plaza Supermarket*, 313 NLRB 74 (1993), cited by the Employer, is a case in which the Board found that a separate unit of meat department employees was not an appropriate unit. However, *Kosher Plaza* is distinguishable from the instant case because the Board relied on evidence, which is different from the evidence in the instant case, showing: that employees from other departments performed meat wrapping work and stocked the meat department display case; that there was no separate supervision of the meat department; and, that meat department employees were not more highly paid than other employees.

Accordingly, I find that the following unit is an appropriate unit for collective-bargaining purposes:

All full-time and regular part-time cashiers, courtesy clerks, grocery clerks, receiving clerks, produce clerks, deli clerks and bakery clerks employed by the Employer at its Paha, Hawaii facility; excluding all other employees, managerial employees, confidential employees, office clerical employees, store managers, assistant store managers, department managers, scan coordinators, meat department employees (meat wrappers, meat cutters, meat cleaners and fish cutter), guards and/or watchpersons, and supervisors as defined in the Act.

As the unit found appropriate herein is larger than that requested, the Petitioner will be accorded a period of 14 days from the date of the Direction of Election in which to submit the requisite showing of interest to support an election. In the event the Petitioner does not wish to proceed with an election, it may withdraw its petition without prejudice by notice to the undersigned within 7 days from the date of this decision. See *ACL Corporation d/b/a Atlanta Hilton and Towers*, 275 NLRB 1413 (1985).

### **CONCLUSIONS AND FINDINGS**

Based upon the entire record, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer is an employer as defined in Section 2(2) of the Act, is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time cashiers, courtesy clerks, grocery clerks, receiving clerks, produce clerks, deli clerks and bakery clerks employed by the Employer at its Pahoehoe, Hawaii facility; excluding all other employees, all managerial employees, confidential employees, office clerical employees, store

managers, assistant store managers, department managers, scan coordinators, meat department employees (meat wrappers, meat cutters, meat cleaners and fish cutter), guards and/or watchpersons, and supervisors as defined by the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective-bargaining by **INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142, AFL-CIO** or by **no union**. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

## **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 20, 901 Market Street, Suite 400, San Francisco, CA **94103**, **on or before July 8, 2008**. **No extension** of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>2</sup> by mail, or by facsimile transmission at

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<sup>2</sup> To file the list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the "Accept" button. The user then completes a form with

(415)356-5156. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Because the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **D. Notice of Electronic Filing**

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents that may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlr.gov](http://www.nlr.gov). On the home page of the website,

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information such as the case name and number, attaches the document containing the election eligibility list, and clicks the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).

select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-Filing instructions explaining how to file the documents electronically will be displayed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in **Washington by 5 p.m., EST on July 15, 2008**. The request may be filed electronically through E-Gov on the Board's web site, [www.nlr.gov](http://www.nlr.gov),<sup>3</sup> but may not be filed by facsimile.

**DATED** at San Francisco, California, **this 1<sup>st</sup> day of July, 2008**.

*/s/ Joseph P. Norelli*

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Joseph P. Norelli, Regional Director  
National Labor Relations Board  
Region 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1735

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<sup>3</sup> Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-Filing page the user should select the option to file documents with the **Board/Office of the Executive Secretary**.